

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Jason Hartman and Ashley Hartman,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

No. 2:20-cv-01492-KJM-DB

ORDER

The parties request the court vacate the scheduling order. Stip. at 2; ECF No. 41. They explain there is good cause because the plaintiff plans to file an unopposed motion for leave to amend his complaint to add an additional defendant. *Id.* Due to this amendment, the parties say they will need more time for discovery. *Id.*

Once a scheduling order is issued, a motion to amend the pleadings is governed by Rule 16's "good cause" requirement. *See Johnson v. Mammoth Recreations*, 975 F.2d 604, 608 (9th Cir. 1992); Fed. R. Civ. P. 16(b)(4) ("A schedule may be modified only for good cause and with the judge's consent."). Were the court to grant the plaintiff's motion for leave to amend his complaint, then there would likely be good cause to adjust the scheduling order accordingly. However, that motion for leave to amend is not before the court. Because the plaintiff has not yet moved for leave to amend, there is not good cause to vacate or modify the scheduling order. Moreover, the plaintiff's motion for leave to amend his complaint must also show good cause and

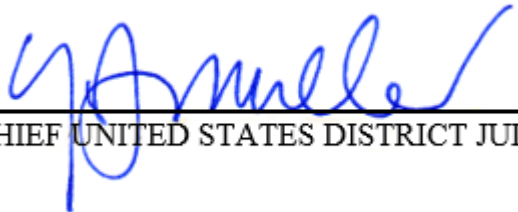
1 establish his “diligence” in seeking the amendment. *Johnson*, 975 F.2d at 609. Until he does so,  
2 the request to vacate the scheduling order is premature.

3 Because the parties have not shown good cause, the court **denies the request to vacate**  
4 **the scheduling order.**

5 This order resolves ECF No. 41.

6 IT IS SO ORDERED.

7 DATED: October 18, 2022.

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CHIEF UNITED STATES DISTRICT JUDGE